

**Testimony of Lorray S.C. Brown
On Behalf of the Michigan Advocacy Project (MAP)**

**House Financial Services Committee
House Bills 4764, 4765, 4766 and 4767**

Chairman Callton and members of the House Financial Services Committee, thank you for the opportunity to testify regarding House Bills 4764, 4765, 4766 and 4767. I am Lorray Brown, the statewide foreclosure prevention specialist at Michigan Poverty Law Program.¹ Michigan Poverty Law Program is the statewide support office for legal services programs. I am here today on behalf of the Michigan Advocacy Project.²

The significant issue presented by these bills is the reduction of the redemption period from six months to 60 days. On behalf of the Michigan Advocacy Project, we oppose any reduction of the redemption period.

**The House Bills Are Contrary to National Policy
to Keep Homeowners in Their Homes and Avoid Foreclosure.**

By reducing the redemption period, the intent is clearly to get homeowners out of their homes sooner. These bills head in the wrong direction of what is taking place nationally. In addressing the foreclosure crisis, no other state has reduced their redemption periods for homeowners. Moreover, at a time when the national policy, through the Consumer Financial Protection Bureau (CFPB), is to establish rules aimed at keeping homeowners in their homes to avoid foreclosure, Michigan is shortening the redemption period to prevent homeowners from keeping their homes.

Likewise, no other state is replacing their strong pre-foreclosure protections for homeowners with the CFPB rules. The CFPB rules provide minimum requirements with the intent that states would keep their strong protections for homeowners. For example, last year, California enacted its Homeowner Bill of Rights and there are no plans to replace the California law with the CFPB rules. Additionally, Nevada is about to enact its own Homeowner Bill of Rights similar to California's.

¹ As the statewide foreclosure specialist, I manage the Michigan Foreclosure Prevention Project, a project of the Michigan Poverty Law Program. The Michigan Foreclosure Prevention Project is a collaborative statewide project involving all the major legal services programs. The goal of the Project is to provide comprehensive and coordinated foreclosure prevention advocacy throughout the state by 1) providing direct legal representation to homeowners facing foreclosure, 2) providing support to housing counseling organizations, 3) coordinating policy advocacy on a statewide basis, and 4) providing training and technical support.

² The Michigan Advocacy Project (MAP) is a joint project between the Michigan League for Human Services (MLHS) and the Michigan Poverty Law Program (MPLP). MAP advocates on behalf of the state's low-income population on issues in the areas of low-income housing, family law, consumer protections, and foreclosure prevention.

Instead of retaining the strong protections provided to homeowners, these bills will take away those protections. These bills will take away:

- ◆ a homeowner's right to have a face meeting with the bank to avoid foreclosure;
- ◆ the requirement that the bank review the homeowner under a basic loan modification standard;
- ◆ the requirement that if the bank does not comply with the pre-foreclosure process, the bank must foreclose judicially; and
- ◆ a homeowner's longstanding right to redeem the property during a realistic timeframe.

The House Bills Ignore the Fact that the Pre-Foreclosure Process and the Post-Foreclosure Process Have Distinct Purposes.

Purposes of the Pre-foreclosure Period

The argument that since homeowners are now getting 120 days in the pre-foreclosure process, it is only right that the post-foreclosure process is reduced by 120 days simply ignores the fact that the pre-foreclosure process and the post-foreclosure process have two distinct purposes. The purpose of the pre-foreclosure process is to avoid foreclosure by providing opportunities for the homeowner to cure the default, to re-modify the loan, to refinance, to avoid a poor credit rating, etc.

Purposes of the Redemption Period

One of the purposes of the redemption period is to give homeowners a realistic period of time within which to seek alternative financing to pay the sale price and keep the home. The homeowner may also sell the property during the redemption period. With the benefit of a longer period to sell the home, the homeowner is much more likely to payoff the lender and potentially recovers any equity lost at the sale. The banks argue that given the economic crisis, no one is able to get financing to redeem, homes are underwater so homeowners are not able to sell and there is no equity to recover. However, this all assumes that the economic crisis will be long term and the market will not turn around. With this proposed reduction of the redemption period, when the market does turn around, homeowners would be at a disadvantage when it comes to their redemption rights.

A second purpose is that, in most cases, the redemption period is the first opportunity for a homeowner to challenge the propriety of the foreclosure sale. Michigan is a non-judicial state. Thus, there is no judicial oversight of the foreclosure process. One trade-off in allowing the banks to foreclose without going to court is to allow homeowners a realistic time to redeem the property. Additionally and more importantly, the redemption period ensures that homeowners' due process rights are protected before their homes are taken away. In most cases, the first time a homeowner has an opportunity to challenge the impropriety of the foreclosure is during the redemption period. 60 days is clearly not sufficient time to ensure that the foreclosure was

conducted properly. Often, the homeowner is not even aware of the actual foreclosure sale until months into the redemption period.

If the banks want a shorter redemption period, to ensure that homeowners' due process rights are protected when their homes are being taken away, then the banks should be required to foreclose judicially.

House Bill 4767 Which Shortens the Redemption Period Is the Wrong Policy to Address Damages to Property.

The banks argue that the 6-months redemption period prevents them from selling the home. The banks further argue that during the redemption period, the homes are deteriorating, are being destroyed and are losing value.

First, no one has done empirical studies of how redemption laws affect home retention or whether redemption laws contribute to deteriorated or destroyed homes. The banks' arguments about dire effects of redemption laws are not based on empirical studies, just anecdotes. The consumer advocates can similarly provide anecdotal information as to the positive outcome of a favorable redemption period. For example, in a national survey of lawyers representing homeowners, 2/3 of the lawyers had seen clients exercise their right of redemption, in some cases the attorneys report having seen hundreds of clients redeem their homes. Any reduction of the redemption period because of these falsely perceived arguments will harm homeowners and will continue to wreak havoc on our neighborhoods.

Second, the shortening of the redemption period is the wrong policy to address the destruction of property. It is possible to draft statutes that allow the shortening or termination of redemption rights upon a verified showing that homeowners are causing deliberate damage to the property during the redemption period. Currently, under Michigan law, the banks can shorten the redemption period to 30 days if the home is abandoned. To address the destruction of property, a similar provision could be enacted that would allow the lender to move for possession if there is a showing of intentional waste or destruction of the property. For example, in the state of Maryland, a foreclosing lender can seek possession sooner where there is "waste or other circumstances that requires prompt remediation." (See Maryland Rule 14-102 and Comm, Note).

MAP opposes these bills. These bills are aimed at having homeowners lose their homes at a faster rate without going to court. Consequently, homeowners will be more at risk of having their due process rights violated.

Thank you.

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